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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,351	06/22/2005	Alexander Christ	CHRIST	2676
20151 7590 02/24/2009 HENRY M FEIEREISEN, LLC HENRY M FEIEREISEN 708 THIRD AVENUE SUITE 1501 NEW YORK, NY 10017				
EXAMINER				
SULLIVAN, DEBRA M				
ART UNIT		PAPER NUMBER		
3725				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/540,351

**Applicant(s)**

CHRIST ET AL.

**Examiner**

Debra M. Sullivan

**Art Unit**

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 December 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-30 is/are pending in the application.  
4a) Of the above claim(s) 26-30 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 16-25 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 22 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date 6/22/2005 & 1/3/2006  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of group I (product claims 16-25) in the reply filed on December 9, 2008 is acknowledged. The traversal is on the ground(s) that the special technical feature between the elected product claims and the device and process claims resides in the non-circular shaping area and that the Examiner is drawing too fine a line of distinction between the elected product claims and the device and process claims. This is not found persuasive because the elected product claims do not contain the special technical feature of painting and printing as required in the non-elected claims and therefore the Examiner is not drawing too fine a line of distinction between the elected claims and the non-elected claims.

Claims 26-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim.

The requirement is still deemed proper and is therefore made FINAL.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program

listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or

REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

***Claim Rejections - 35 USC § 112***

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the circumference of the lower can portion (i.e. substantially circular cross section) is equal in size to the circumference of the shaping area (i.e. non-circular cross section).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 16-19 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Dolveck (US Patent # 3,759,205). Dolveck discloses a spray can comprising of a can body made

of metal and having a lower can portion and an upper can portion, wherein the lower can portion has a bottom and a generally cylindrical configuration so as to have a substantially circular cross section, wherein the upper can portion is provided with a shoulder area and has a collared can opening capable of insertion of a spraying system [See col. 1 lines 26-39], the upper can portion having a shaping area constructed to extend across the shoulder area and defined by a non-circular cross section [See FIG 25].

In reference to claim 17, the can body has a substantially constant wall thickness about a circumference thereof and along a height thereof, as seen in figure 25.

In reference to claim 18, as best understood, the circumference of the lower can portion is equal in size to the circumference of the shaping area.

In reference to claim 19, Dolveck further discloses the shaping area has a surface which is oval, as seen in figure 25.

In reference to claim 21, the can opening of the can body is standardized for insertion of the spraying system of standard configuration [See col. 1 lines 26-29, since the article being formed is for aerosol use it is inherent that that the can opening is standardized for a spraying system].

In reference to claims 22-24, Dolveck meets the structural limitations of the can body according to claim 16 and therefore is constructed for a filling pressure between 5 and 35 bar, between 10 and 20 bar and between 12 and 18 bar.

2. Claims 16-18 and 20-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Erhard (US Patent # 5,899,105). Erhard discloses a spray can comprising a can body (2) made of metal [See col. 3 lines 40-41] and having a lower can portion (2A) and an upper can portion (2B

& 2C), wherein the lower can portion has a bottom and a generally cylindrical configuration so as to have a substantially circular cross section, wherein the upper can portion is provided with a shoulder area and has a collared can opening capable of insertion of a spraying system, the upper can portion having a shaping area (2B) constructed to extend across the shoulder area and defined by a non-circular cross section [See FIG 1].

In reference to claim 17, the can body has a substantially constant wall thickness about a circumference thereof and along a height thereof, as seen in figure 1.

In reference to claim 18, as best understood, the circumference of the lower can portion is equal in size to the circumference of the shaping area.

In reference to claim 20, the shaping area has a surface which resembles a rectangle, as seen in figure 1 [See col. 5 lines 24-28],

In reference to claim 21, the can opening of the can body is standardized and capable of insertion of the spraying system of standard configuration.

In reference to claims 22-24, Erhard meets the structural limitations of the can body according to claim 16 and therefore is constructed for a filling pressure between 5 and 35 bar, between 10 and 20 bar and between 12 and 18 bar.

In reference to claim 25, Erhard further discloses the metal of the can body (2) is aluminum [See col. 3 lines 40-41].

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dolveck in view of Chupak (US Patent # 6,907,653). Dolveck discloses the invention substantially as claimed except for wherein the metallic material is aluminum. However, Chupak teaches that it is well known in the can art to form cans from aluminum for packaging liquids [See col. 1 lines 16-18]. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the can of Dolveck to be constructed of aluminum since it is well known in the art for packaging of liquids as evidenced by Chupak.
2. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Erhard. Erhard further discloses that the shaping area may have any cross section depending on the profile of the shaping area to be obtained [See col. 5 lines 24-28]. Therefore, it is within the realm of one having ordinary skill in the art at the time the invention was made to provide a shaping area having an oval surface, based on the suggestion of Erhard that the shaping area (2B) may have any desired shape.

#### ***Pertinent Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent # 3,759,203 to Frankenberg.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Debra Sullivan whose telephone number is (571) 272-1904. The examiner can normally be reached Monday - Thursday 10am - 8pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dana Ross can be reached at (571) 272-4480. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Debra M Sullivan/  
Examiner, Art Unit 3725

/Dana Ross/  
Supervisory Patent Examiner, Art Unit 3725